

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1063 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
IKBALKAUR TIRATHSING

Versus

BHAILALBHAI BADAJI  
-----

Appearance:

MR DD VYAS for appellant

MR MC BAROT for Respondent No. 1  
-----

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 31/03/2000

ORAL JUDGEMENT

1. Appellant-original plaintiff, by filing this appeal under Section 96 of the Code of Civil Procedure, has challenged judgment and decree dated October 30, 1979 passed by learned Judge, 7th Court, City Civil Court, Ahmedabad, in Civil suit No.1534 of 1977, whereby learned Judge dismissed plaintiff's suit claiming compensation of Rs.3800/- for use and occupation charges of suit

premises, bearing Plot No.14 of Bapunagar Cooperative Housing Society Limited, Ahmedabad.

2. As per the case of the appellant, the defendant-respondent was Secretary of the Bapunagar Cooperative Housing Society Limited, Ahmedabad ('Society' for short), at the relevant time. The respondent occupied ground floor of the suit premises without permission of the appellant, and, on coming to know this, the appellant questioned the respondent about his possession and asked him to vacate the ground floor of the bungalow, which was constructed on Plot No.14. It was the case of the appellant that the respondent had occupied bungalow No.14 as the bungalow of the respondent was under construction in the Society. As per the appellant's case, the respondent had agreed to pay to the appellant Rs.300/- per month as use and occupation charges. That, as per the said agreement, the respondent occupied bungalow no.14 for the period between January 1, 1976 and January 17, 1977. It was alleged that on January 17, 1977 the respondent had vacated ground floor of bungalow No.14. As the respondent did not pay any use and occupation charges to the appellant, the notice was served on the respondent demanding Rs.3760/- from the respondent for use and occupation charges for the period between January 1, 1976 and January 17, 1977 at the rate of Rs.300/- per month. As the respondent did not pay the above amount, Civil Suit No.1534 of 1977 was filed in the City Civil Court, Ahmedabad.

3. The suit was resisted by the respondent by filing written statement, inter alia, contending that the City Civil Court, at Ahmedabad, had no jurisdiction to try the suit. It was denied that the respondent was using the ground floor of the bungalow without permission of the appellant. It was contended that, on completion of construction of bungalow on plot No.14, the Municipal Corporation of Ahmedabad had granted completion certificate and permission to occupy that bungalow was given in the year 1977 and, at that time, possession of the bungalow was handed over to the appellant by the Housing Society. It was further contended that before January 1977, the appellant had no right, interest or title on the bungalow because in January 1977 the possession of the said bungalow was with the contractor of the housing society and was not with the appellant. It was denied that the respondent had requested the appellant to allow him to stay in the ground floor till construction of his bungalow was completed.

3. On rival pleading of the parties, learned Judge

framed issues at Exh.21. Learned Judge, City Civil court, on appreciation of oral as well as documentary evidence, concluded that the appellant had failed to prove that the respondent had used premises of ground floor of bungalow No.14 on monthly fee of Rs.300/- as use and occupation charges. Learned Judge further concluded that, till January 17, 1977, the appellant had no right, title and interest in the suit property. Learned Judge has further held that the respondent had never occupied the suit premises as alleged by the appellant, and had never agreed to pay Rs.300/- per month as use and occupation charges. On the basis of aboveresferred to conclusion, learned Judge has dismissed the appellant's suit which has given rise to filing of this appeal.

4. Learned advocate for the appellant has taken me through entire record and proceedings of the case and submitted that the respondent, who was Secretary of the Society, had occupied the said bungalow from January 1976 to January 1977 and had agreed to pay use and occupation charges at the rate of Rs.300/- per month. Learned counsel for the appellant has further submitted that the learned trial Judge has erred in not passing decree for Rs.3800/- as prayed for in the suit.

5. None of the contentions raised by learned counsel for the appellant deserves any merit. Admittedly, the respondent was Secretary during the period between January 1976 and January 1977 when some portion of bungalow No.14 was already constructed. The respondent was looking after construction of various bungalows which were under construction of the Society. The respondent used to sit in the bungalow of the appellant whenever he had spare time. But, merely because the respondent, as Secretary of the Society, used to sit in the bungalow of the appellant, it cannot be said that he was in occupation of the said bungalow and was liable to pay charges for use and occupation at the rate of Rs.300/per month. The respondent could not have occupied the suit bungalow prior to January 1977 as the bungalow was completed and the Municipal Corporation had granted completion certificate and permission to use and occupy the bungalow was granted on January 17, 1977. Therefore, in my opinion, learned Judge has rightly rejected the appellant's case that the respondent had occupied ground floor of the bungalow on use and occupation charges of Rs.300/per month. The findings and conclusion arrived at by the learned Judge are clearly borne out from oral as well as documentary evidence of the case. Under the circumstances, I am of the opinion that no ground is made

out by learned counsel for the appellant to interfere with the impugned judgment and decree in this appeal.

5. For the foregoing reasons, the appeal fails and is dismissed with no order as to costs.

\*\*\*\*\*

(swamy)